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November 18, 2003

**EX PARTE SUBMISSION VIA ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: CC Docket No. 96-45 – *Ex Parte* Communication Concerning Highland Cellular and Virginia Cellular ETC Designation Petitions

Dear Ms. Dortch:

Today the attached letter from Karen Brinkmann is being filed electronically in CC Docket No. 96-45 regarding the ETC designation petitions filed by Highland Cellular and Virginia Cellular. A copy of the letter is being delivered electronically to the commissioners. Please direct any questions concerning this matter to Karen Brinkmann or me at (202) 637-2200.

Respectfully submitted,



Tonya Rutherford

cc: Christopher Libertelli – Office of the Chairman  
Matthew Brill – Office of Commissioner Abernathy  
Scott Bergmann and Lisa Zaina – Office of Commissioner Adelstein  
Jessica Rosenworcel – Office of Commissioner Copps  
Daniel Gonzalez – Office of Commissioner Martin  
William Maher – Chief, Wireline Competition Bureau  
Carol Matthey – Deputy Chief, Wireline Competition Bureau  
Eric Einhorn – Chief, Telecommunications Access Policy Division, Wireline Competition Bureau  
Diane Law Hsu – Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau  
Anita Cheng – Assistant Chief, Telecommunications Access Policy Division, Wireline Competition Bureau

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Paul Garnett – Assistant Chief, Telecommunications Access Policy Division, Wireline  
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Katie King - Telecommunications Access Policy Division, Wireline Competition Bureau

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November 18, 2003

Chairman Michael K. Powell  
Commissioner Kathleen Q. Abernathy  
Commissioner Jonathan S. Adelstein  
Commissioner Michael J. Copps  
Commissioner Kevin J. Martin  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: CC Docket No. 96-45 – *Ex Parte* Communication Concerning  
Highland Cellular and Virginia Cellular ETC Designation Petitions

Dear Chairman and Commissioners:

CenturyTel, Inc., Citizens Communications, Rock Hill Telephone Company d/b/a Comporium Communications, Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom, Matanuska Telephone Association, TDS Telecom, TXU Communications Telephone Company, Fort Bend Telephone Company, and Valor Telecommunications (collectively the “Midsize Companies”) respectfully submit these *ex parte* comments in connection with the Highland Cellular Telephone, Inc. petition for designation as an eligible telecommunications carrier (“ETC”) in Virginia,<sup>1</sup> and the Virginia Cellular LLC petition for designation as an ETC and for redefinition of three rural service areas in the state of Virginia.<sup>2</sup>

### Background

State commissions and the FCC are receiving and processing competitive ETC (“CETC”) designation applications, and requests for redefinition of rural service areas for CETCs that do not intend to cover the entire study area served by the rural incumbent local exchange carrier (“ILEC”). Some states have granted such requests merely on the basis of promoting competition, and indeed, the FCC itself has concluded that designation of CETCs in areas served by rural telephone companies serves the public interest by promoting competition in high-cost

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<sup>1</sup> *Wireline Competition Bureau Seeks Comment on Highland Cellular Telephone, Inc. Petition for Designation as an Eligible Telecommunications Carrier in Virginia*, DA 02-2487 (Wireline Comp. Bur. Oct. 2, 2002).

<sup>2</sup> *Wireline Competition Bureau Seeks Comment on Virginia Cellular LLC Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia*, DA 02-1152 (Wireline Comp. Bur. May 15, 2002).

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and rural areas.<sup>3</sup> The Midsize Companies disagree that promoting competitive entry alone is a sufficient justification to satisfy the public interest standard under the statute. In fact, had Congress intended for all carriers serving rural areas to be designated as ETCs, it would not have required that additional ETCs be designated in rural areas only where the state commission finds such designation to be in the public interest. The FCC has an obligation to adopt minimum standards to ensure that designations both by the state commissions and by the FCC satisfy the public interest requirements of the Communications Act of 1934, as amended (the “Act”).

On the subject of ETC designations, the Midsize Companies have filed comments in response to the February 3, 2003 Notice of the Federal-State Joint Board on Universal Service in the above-captioned proceeding,<sup>4</sup> have testified before the Joint Board on the same subject,<sup>5</sup> and have made additional *ex parte* contacts with the members of the Joint Board.<sup>6</sup>

Throughout these proceedings, the Midsize Companies have attempted to focus attention on the requirement under Section 214(e) of the Act that CETCs be designated in areas served by rural telephone companies only after an affirmative finding that such designation would serve the public interest. Further, the Midsize Companies have advocated adoption of uniform federal standards for all CETC designations, to ensure that all who receive universal service support are using the support for the purpose for which it is intended, and for further clarity in the standards that apply to service area redefinitions to ensure that they achieve the universal service goals of

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<sup>3</sup> *In the Matter of Federal State Joint Board on Universal Service, RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, 17 FCC Rcd 23532, 23532 ¶1, Memorandum Opinion and Order (2002) (“RCC Order”); *In the Matter of Federal State Joint Board on Universal Service, Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, 17 FCC Rcd 24393, 24393 ¶1, Memorandum Opinion and Order (2002) (“Cellular South Order”).

<sup>4</sup> Comments of CenturyTel, Inc., filed in CC Docket No. 96-45 on May 5, 2003; Reply Comments of Independent Telephone & Telecommunications Alliance, filed in CC Docket No. 96-45 on June 3, 2003. *See Federal-State Joint Board on Universal Services Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support and the ETC designation Process*, CC Docket No. 96-45, Public Notice, FCC 03J-1 (rel. Feb. 7, 2003) (“Joint Board Notice”).

<sup>5</sup> Prepared Testimony of Jeff Glover (CenturyTel, Inc.) on Behalf of Independent Telephone & Telecommunications Alliance Before the Federal-State Joint Board on Universal Service, filed in CC Docket No. 96-45 on July 22, 2003. *See Federal-State Joint Board on Universal Service to Hold En Banc Hearing on the Portability of High-Cost Universal Service Support and the ETC Designation Process*, CC Docket 96-45, DA 03-2294 (Wireline Comp. Bur. July 11, 2003).

<sup>6</sup> Letter from Karen Brinkmann to Secretary Dortch filed October 20, 2003 (Notice of *Ex Parte* Presentation in CC Docket No. 96-45).

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promoting comparable high-quality and affordable service for all Americans. Many other parties have proposed similar standards.<sup>7</sup>

As Chair of the Federal-State Joint Board, Commissioner Abernathy has announced that the Joint Board will likely present its recommendations on these issues to the FCC as soon as two months from now.<sup>8</sup> The FCC will then have one year in which to act on the Joint Board's recommendations.<sup>9</sup>

The Vermont Public Service Board Order

While some states erroneously have granted ETC designation and redefinition requests solely on the basis of competition, other states are conducting a more thoughtful analysis of CETC applications and enforcing the standards established in the Act. One such state recently issued a decision that is worthy of FCC consideration. On June 26, 2003, the Vermont Public Service Board ("PSB") entered an order adopting the proposed decision of the hearing officer and granting ETC status to RCC Atlantic.<sup>10</sup> Significantly, the Vermont PSB imposed a number of conditions on the ETC designation, including:

1. That the CETC must use the federal funds to expand its coverage in Vermont;
2. That the CETC must offer a basic service package at a regulated rate of \$8.50 per month to customers eligible for Lifeline benefits;
3. That the CETC take certain prescribed steps to reduce call blockage;
4. That the CETC make certain other changes to its terms of service to comply with state service standards, including limits on disconnection for non-payment of toll charges, rules concerning customer deposits, and similar matters;
5. That the CETC notify customers as to the amount of federal funds received;

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<sup>7</sup> E.g., Letter from David C. Bergmann to Secretary Dortch filed November 4, 2003 (Notice of *Ex Parte* Presentation in CC Docket No. 96-45) at 2-3; Comments of ACS of Fairbanks, Inc., filed in CC Docket No. 96-45 on May 5, 2003 at 10-12; Comments of the National Association of State Utility Consumer Advocates, filed in CC Docket No. 96-45 on May 5, 2003 at 8-14; Comments of the Washington Independent Telephone Association, filed in CC Docket No. 96-45 on May 5, 2003 at 14-26; Comments of the Alaska Telephone Association, filed in CC Docket No. 96-45 on May 5, 2003 at 3-17.

<sup>8</sup> See Terry Lane, "Part of the Process:" *House Small Business Committee Taking Active Look at USF*, Communications Daily, Sept. 26, 2003, at 3.

<sup>9</sup> 47 U.S.C. § 254(a)(1).

<sup>10</sup> *Designation of Eligible Telecommunications Carriers Under the Telecommunications Act of 1996 (RCC Atlantic, Inc. d/b/a Unicel)*, Docket No. 5918, 2003 Vt PUC LEXIS 173 (Vt. Pub. Svc. Bd. June 26, 2003) (the "Vermont PSB Order").

6. That the CETC file annual reports similar to those required under state law of rural ILECs, demonstrating:
  - a. that the CETC has substantially completed the build-out of its network and offers full coverage to essentially all of its service area; or
  - b. that its construction spending in Vermont (excluding amounts spent on E911 and number portability compliance) exceeds the sum of its recent federal support plus a baseline spending level that predates ETC status;
7. That the CETC be capable of CMRS provider local number portability by May 24, 2004;
8. That the CETC shall notify the PSB within 30 days if any of the information it previously provided, concerning the provision of the nine covered services or the advertising of the availability of those services, is no longer accurate; and
9. That the CETC designation shall expire in two years unless the CETC applies for recertification and files with the PSB a certification that it continues to satisfy all of the requirements of federal law for ETC designation, as amended, and the requirements of this order. Included in its recertification application must be detailed evidence of the CETC's effective coverage, including maps demonstrating signal strength in population centers and along state highways.
10. In addition, to ensure that all customers in Vermont receive universal service at reasonably comparable rates, the PSB may in the future require the CETC to provide cell extenders, external antennae, and more powerful telephones at reduced cost or no cost to the customer.
11. The PSB retains jurisdiction to review, modify or revoke the ETC designation, or alter the service area of the CETC, which authority may be exercised in the case that the FCC alters the list of requirements for ETCs.<sup>11</sup>

The FCC Should Enforce Uniform Standards For All ETCs  
Similar to the Vermont PSB Standards

It appears that changes to the current rules governing CETC designations and the way in which federal support is made available to ETCs may not be far off. Yet the FCC already has many CETC designation applications and requests for service area redefinition pending before the agency, and a number already have been granted. While the Midsize Companies appreciate that the FCC may not want to postpone decision on pending matters until final rule changes are adopted, the FCC has considerable authority to impose conditions on CETC designations and rural service area redefinitions under the current rules and should exercise its authority to do so.

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<sup>11</sup> *Vermont PSB Order*, 2003 Vt PUC LEXIS 173 at \*73-\*78.

As detailed in previous filings in this docket, the Midsize Companies support the imposition by the FCC of simple, clear requirements for the use of federal high-cost support. Requiring all ETCs to abide by the same requirements is the only way to ensure that support is being used for the purpose for which it is intended, and not undermining universal service goals by allowing some supported carriers to provide substandard services to customers.

Specifically, the Midsize Companies advocate that:

1. CETCs be required to serve the ILEC's entire study area in order to receive the same per-line support as the ILEC;
2. All ETCs be required to provide the same minimum level of service (service quality, reliability, network support, customer service, and coverage) to all customers as a condition of receiving support (based on what the state requires of the carrier-of-last-resort or the ILEC serving the area);
3. All ETCs be required to make available the same basic "universal service" calling plan to customers for whom the carriers receive support (such as the availability of basic dial-tone at a specified rate, flat-rated local calling for a minimum number of minutes within a specified area, free incoming calls, and similar state requirements);
4. All decisions to grant CETC designations and rural service area redefinitions be accompanied by a cost-benefit analysis demonstrating that the state (or the FCC) finds that the grant will result in a net benefit in the protection and advancement of universal service to the public;
5. All ETCs demonstrate in their annual §54.314 certification<sup>12</sup> that they are using federal high-cost support to invest in network facilities and the advancement of universal service in the area intended to be covered by the support; and
6. All ETCs bear the same reporting requirements to the FCC or the state, to demonstrate compliance with the above conditions, and the FCC assume oversight responsibilities to enforce these conditions.

In the case of CETC applicants that also seek service area redefinition, as some of the Midsize Companies previously have observed,<sup>13</sup> an additional affirmative public interest finding

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<sup>12</sup> The FCC requires the states (and federally designated CETCs) annually to certify that support is being used for the purpose for which it is intended, and the states require CETCs to so designate to them. *See* 47 C.F.R. §54.314.

<sup>13</sup> Reply Comments of CenturyTel, Inc, filed in CC Docket No. 96-45 on Feb. 21, 2003 at 6-9; *see also* Comments of Independent Telephone & Telecommunications Alliance, filed in CC Docket No. 96-45 on Sept. 27, 2002 at 6-8; Prepared Testimony of Jeff Glover on Behalf of Independent Telephone & Telecommunications Alliance Before the Federal-

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is required under Section 214(e)(5) of the Act. That finding must take into account the recommendations of the Federal-State Joint Board, and weigh the benefits and the costs of giving federal funds to a CETC that receives support based on the incumbent's average per-line costs for serving its entire study area, but does not intend to serve the same area as the incumbent. The Midsize Companies believe that the statute requires the FCC, before it may approve such redefinition, to conclude that it will result in the promotion of universal service, and greater benefits to the public, not cherry-picking by the CETC.<sup>14</sup>

Existing State Standards Are An Appropriate Reference Point for CETCs

None of the requirements listed above would require a change to current FCC rules. Moreover, nothing in these requirements should be considered controversial or burdensome to administer, since they all represent standards that already apply to ILECs in each state. The Midsize Companies' proposal is essentially that all ETCs -- ILECs and competitors, whether wireline or wireless -- should be held to the same standards as a condition of receiving the same federal support.<sup>15</sup>

Wireless carriers have argued that existing state service standards are inappropriate for wireless carriers. The Midsize Companies disagree. While states may not have imposed most of their service standards on wireless carriers, there is no basis for concluding that the service standards under which LECs operate cannot be applied to wireless ETCs. Under the Virginia Administrative Code, for example, all LECs, including competitive LECs, are required to "provide the necessary equipment, plant facilities, and personnel within [their] certificated areas to deliver high quality customer service."<sup>16</sup> Quality of service in Virginia is measured by eight key indicators: (1) Commission complaints per 1000 access lines per year; (2) trouble reports per 100 access lines per year; (3) percent repeated trouble reports per month; (4) network reports per 100 access lines per month; (5) network switching performance, percent satisfactory per month (measuring "the overall performance of central office equipment in providing dial tone, switching and connecting customers, and collecting call billing data"); (6) business office accessibility, percent per month; (7) repair service accessibility, percent per month; and (8) service orders completed within five working days, percent per month. Each of these indicators can be applied to wireless ETCs by substituting "connections" for "access lines" and "MTSO"

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State Joint Board on Universal Service, filed in CC Docket No. 96-45 on July 22, 2003 at 5.

<sup>14</sup> Reply Comments of CenturyTel, Inc., filed in CC Docket No. 96-45 on June 3, 2003 at 2-3.

<sup>15</sup> ALLTEL Communications, Inc. recently withdrew without prejudice its application for designation as an ETC in South Carolina and has agreed further not to file another application for one year. *See* Letter from Robert D. Coble to Bruce F. Duke, Deputy Executive Director of the South Carolina Public Service Commission, dated Nov. 6, 2003; Motion to Withdraw Application filed by ALLTEL Communications, Inc. dated Oct. 29, 2003.

<sup>16</sup> 20 VAC § 5-400-80.



for “central office.” These standards help ensure that all customers receive a level of service that the state deems adequate, regardless of where they live or which carrier serves them. All of these requirements can -- and should -- be made applicable to wireless ETCs in Virginia in order to ensure that no class of ETCs receives an undue competitive advantage over other ETCs, and that no class of customers receives inferior service quality.

The standards the Midsize Companies advocate are precisely the type of requirements adopted in the *Vermont PSB Order*: coverage should be ubiquitous throughout the areas supported; service quality should be adequate by state standards; affordable calling plans should be available to all customers in areas receiving support; and all of this should be verified by the state (or FCC) through appropriate enforcement mechanisms, beginning with annual reporting by ETCs, and periodic redesignation of all ETCs by the state (or FCC).

If a state or the FCC is satisfied that these conditions are met, it ought then be able to satisfy the requirements of Section 214(e)(2) that the designation is in the public interest, and Section 254(e) that the support is being used for the purpose for which it is intended. These standards should apply to all ETC designations.<sup>17</sup>

#### Application of Future Rule Changes To CETCs

The Midsize Companies urge the FCC to impose the minimum standards described above, which are not inconsistent with the current rules, to the applications now pending before the agency. Imposing these standards will help the FCC ensure that any grant of the pending requests will serve the public interest, as intended by Section 214(e), and that federal support is being used for the purpose for which it is intended, as required by Section 254(e). Indeed, the FCC has an obligation to ensure that universal service support is distributed responsibly, and that carriers are not receiving support without meeting specified service quality and network reliability standards. Adopting these conditions now also will assist all carriers in making rational decisions about serving high-cost markets and expending the funds to seek ETC status.

A number of parties have advocated additional conditions on CETC designations that would require rule changes, such as a requirement that CETCs justify their requested support based on their own costs, which would require modification to Section 54.307 of the Commission's rules.<sup>18</sup> These matters will no doubt be the subject of Joint Board

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<sup>17</sup> Significantly, the Vermont PSB did not “rubber stamp” RCC's application for ETC designation even though RCC was applying for non-rural high-cost support. The Vermont PSB found that even in non-rural areas, it is appropriate to perform a public-interest analysis, or else Congress would not have required states to perform the designation function at all, but would have made designation automatic. *Vermont PSB Order*, 2003 Vt PUC LEXIS 173 at \*22-\*24.

<sup>18</sup> See, e.g., Comments of ACS of Fairbanks, Inc., filed in CC Docket No. 96-45 on May 5, 2003 at 11-12; Letter from David C. Bergmann to Secretary Dortch filed November 4, 2003 (Notice of *Ex Parte* Presentation in CC Docket No. 96-45) at 2-3; Comments of the

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recommendations and may be acted upon by the Commission following appropriate notice and comment. The Midsize Companies limit the present comments to conditions the Commission may impose without a rule change.

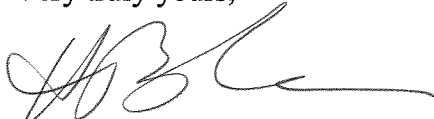
In its order in the above-captioned applications, the FCC can and should make clear that, under the rules, any CETC designations and rural service area redefinitions that may be granted are subject to compliance with future rule changes the FCC may adopt, in this or future proceedings. The Midsize Companies believe that if the FCC incorporates standards such as those adopted in the *Vermont PSB Order* in all pending designations, the FCC will send an appropriate and timely signal to the market about the cost undertaking ETC responsibilities and sharing in ETC funding.

#### Conclusion

For the reasons stated herein, the Midsize Companies respectfully request that the FCC make any grant of ETC designation or CETC service area redefinition conditioned upon compliance with appropriate federal standards for receipt of universal service support, of the type adopted in the *Vermont PSB Order* and described by the Midsize Companies in this letter. Such conditions are wholly consistent with the obligations ILECs undertake when they serve high-cost areas, and will help ensure that the distribution of support to new recipients will actually benefit consumers. The actions the FCC takes today will provide guidance, as well, to states dealing with similar applications for federal support.

Please direct any questions concerning this matter to me.

Very truly yours,



Karen Brinkmann

*Counsel for the Midsize Companies:* CenturyTel, Inc., Citizens Communications, Rock Hill Telephone Company d/b/a Comporium Communications, Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom, Matanuska Telephone Association, TDS Telecom, TXU Communications Telephone Company, Fort Bend Telephone Company, and Valor Telecommunications

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Organization for the Promotion and Advancement of Small Telecommunications Companies, filed in CC Docket No. 96-45 on May 5, 2003, Attachment at x-xii; Letter from Karen Brinkmann to Secretary Dortch filed October 20, 2003 (Notice of *Ex Parte* Presentation in CC Docket No. 96-45).

**LATHAM & WATKINS** LLP

cc: Christopher Libertelli – Office of the Chairman  
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